Government of Kerala
1977

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXII] Trivandrum, Monday, 13th June 1977 / 23rd Jyaistha 1899 [No. 339

GOVERNMENT OF KERALA

Law (Legislation A) Department

NOTIFICATION

No. 8955-Leg. (A) 2/77/Law.

Dated, Trivandrum, 13th June 1977/ 23rd Jyaistha, 1899.

The following Ordinance promulgated by the Governor on the 8th day of June, 1977 is hereby published for general information.

By order of the Governor,

M. SEKHARAN,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1977.

33/1910/MC.

ORDINANCE No. 13 OF 1977

THE KERALA TAX ON EMPLOYMENT (AMENDMENT) ORDINANCE, 1977

Promulgated by the Governor of Kerala in the Twenty-eighth Year of the Republic of India.

AN

ORDINANCE

to amend the Kerala Tax on Employment Act, 1976.

Preamble.—WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Kerala Tax on Employment (Amendment) Ordinance, 1977.

(2) It shall come into force at once.

2. *Act 14 of 1976 to be temporarily amended.*—During the period of operation of this Ordinance, the Kerala Tax on Employment Act, 1976 (14 of 1976) (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in sections 3 to 8.

3. *Amendment of section 2.*—In section 2 of the principal Act, after clause (e), the following clause shall be inserted, namely:—

"(ee) "employer", in relation to an employee earning any salary or wages under him, means the person who is responsible for the disbursement of such salary or wages and includes the head of office of an establishment as well as the manager or agent of the employer;".

4. *Substitution of new sections for sections 5 to 12.*—For sections 5 to 12 of the principal Act, the following sections shall be substituted, namely:—

"5. *Employers liability to deduct and pay tax on employment on behalf of the employees.*—The tax on employment payable by any person earning a salary or wage, shall be deducted by his employer from the salary or wage payable to that person before such salary or wage is paid to him, and such employer shall, irrespective of whether such deduction has been made or not before the salary or wage is paid to such person, be liable to pay the tax on employment on behalf of such person:

Provided that, where the employer is an officer of Government, the Government may, notwithstanding anything contained in this Act, prescribe the manner in which such employer shall deduct and remit the tax on employment payable by the persons of whom he is the employer.

6. *Registration and enrolment.*—(1) Every employer (not being an officer of Government) liable to pay the tax on employment under section 5 shall obtain a certificate of registration from the assessing authority in the prescribed manner.

(2) Every person liable to pay the tax on employment (other than a person earning salary or wages, in respect of whom the tax on employment is payable by his employer) shall obtain a certificate of enrolment from the assessing authority in the prescribed manner.

(3) Every employer or person required by this section to obtain a certificate of registration or enrolment shall, within thirty days from the date of commencement of the Kerala Tax on Employment (Amendment) Ordinance, 1977, or if he was not an employer, or as the case may be, was not engaged in any profession, art, calling or business on that date, within thirty days from the date on which he becomes an employer or, as the case may be, from the date on which he engages in any profession, art, calling or business apply for a certificate of registration or enrolment, as the case may be, to the assessing authority in the prescribed form, and the assessing authority shall, after making such inquiry as it deems necessary, grant him such certificate.

(4) Every person referred to in sub-section (2) shall apply for a revised certificate of enrolment to the assessing authority in the prescribed form within thirty days of his becoming liable to pay tax on employment at a rate higher or lower than that specified in the certificate of enrolment and the assessing authority shall, after making such inquiry as it deems necessary, grant him a revised certificate of enrolment.

(5) The assessing authority shall mention in every certificate of enrolment the amount of the tax on employment payable for a half-year and the date by which and the place at which and the person to whom such tax on employment shall be payable by the holder of such certificate, and such certificate shall be deemed to be a notice of demand for the purpose of this Act.

(6) Where an employer or a person liable to apply for a certificate of enrolment has wilfully failed to apply for the certificate of registration or the certificate of enrolment, as the case may be, within the required time, the assessing authority may, after giving him a reasonable opportunity of being heard, impose on him a penalty not exceeding twenty rupees for each day of delay in the case of an employer and not exceeding five rupees for each day of delay in the case of any other person.

(7) Where an employer or other person has deliberately given false information in any application made under this section, the assessing authority may, after giving him a reasonable opportunity of being heard, impose on him a penalty not exceeding one thousand rupees.

7. *Returns.*—(1) Every employer who has obtained a certificate of registration under this Act shall furnish to the assessing authority within fifteen days of the expiry of every half-year, a return in the prescribed form showing therein the salaries and wages paid by him and the amount of the tax on employment deducted by him in respect thereof, during that half-year.

(2) Every such return shall be accompanied by a treasury chalan in proof of payment of the full amount of the tax on employment due according to the return, and a return without such proof of payment shall not be deemed to have been duly filed.

(3) Where an employer has wilfully failed to file such return within the required time, the assessing authority may, after giving him a reasonable opportunity of being heard, impose on him a penalty not exceeding five rupees for each day of delay.

8. *Assessment of employers.*—(1) If the assessing authority is satisfied that the return filed by an employer under section 7 is correct and complete, it shall accept the return and assess the tax on employment due from that employer in accordance with such return.

(2) If the assessing authority is not satisfied that a return referred to in sub-section (1) is correct and complete, it shall serve on the employer a notice requiring him, on a date specified in the notice, to attend in person, or through an authorised representative, and to produce accounts and papers in support of the return.

(3) The assessing authority shall, on examination of the accounts and papers produced in compliance with the notice under sub-section (2), assess the amount of the tax on employment payable by the employer.

(4) If the employer fails to comply with the terms of a notice under sub-section (2), or if in the opinion of the assessing authority the accounts and papers are incorrect or incomplete or unreliable, that authority shall, after such inquiry as it deems fit, assess the tax on employment due, to the best of its judgment.

(5) If an employer has wilfully failed to get himself registered or being registered has failed to file any return, the assessing authority shall, after giving the employer a reasonable opportunity of being heard and after holding such enquiry as it deems fit, pass an order assessing the amount of the tax on employment due, to the best of its judgment.

(6) When any tax on employment is due from an employer in consequence of any order passed under this section, the assessing authority shall serve upon the employer liable to pay such tax, a notice of demand in the prescribed form specifying the sum so payable and the time within which and the person to whom it shall be paid.

9. *Power to assess in case of escape from assessment.*—If for any reason any employer or other person liable to pay the tax on employment has escaped assessment in any half-year, the assessing authority may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to such tax and demanding payment thereof within such time as may be specified in the notice, and the provisions of this Act shall, so far as may be, apply as if the assessment was made in the half-year to which such tax relates.

10. *Payment and recovery of tax on employment.*—Any amount specified as payable in a notice of demand or in a certificate of enrolment or in a notice under section 9 shall be paid within the time specified in the notice of demand or in the certificate of enrolment or in the notice, as the case may be, and any employer or other person failing so to pay, shall be deemed to be in default.

11. *Mode of recovery.*—Without prejudice to any other mode of recovery, the arrears of tax on employment payable and the penalty imposed under this Act, may be recovered under the

provisions of the Revenue Recovery Act for the time being in force as if it were an arrear of public revenue due on land.

12. *Penalty for non-payment of tax on employment.*—If an employer who holds a certificate of registration or a person who holds a certificate of enrolment fails without reasonable cause to make payment of any amount of the tax on employment due from him within the time specified in the notice of demand the assessing authority may after giving him a reasonable opportunity of being heard, impose on him a penalty not exceeding fifty per cent of the amount of the tax on employment due from him.".

5. *Amendment of section 13.*—In section 13 of the principal Act,—

(a) in sub-section (1), for the words and figures "in the notice of demand served under section 10", the words "in a notice of demand or other notice issued under this Act" shall be substituted;

(b) in sub-section (3), for the words "date of service of the notice of demand relating to the assessment or the date of service of the order", in both the places where they occur, the words "date of receipt of the notice of demand or other notice relating to the assessment or the date of receipt of the order" shall be substituted.

6. *Amendment of section 16.*—In section 16 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where any such rectification has the effect of enhancing an assessment or reducing a refund, the assessing authority shall serve on the employer or on the other person, a notice of demand in the prescribed form and such sum shall be payable by such employer or the other person, as the case may be, within such time, at such place and to such person, as may be specified in such notice.".

7. *Amendment of section 20.*—In section 20 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) An employer or other person who, without sufficient cause, fails to comply with any of the provisions of this Act or the rules framed thereunder shall, on conviction before a Magistrate be punishable with fine not exceeding five thousand rupees, and, when the offence is a continuing one, with fine not exceeding fifty rupees per day during the period of the continuance of the offence.".

8. *Amendment of section 29.*—In section 29 of the principal Act, in sub-section (2), for clause (b), the following clauses shall be substituted, namely:—

"(b) the procedure for deduction and remittance of tax on employment by the employer who is an officer of the Government;

(bb) the form of the certificate of registration, certificate of enrolment, notice of demand and other notice to be issued under this Act;".

N. N. WANCHOO,
GOVERNOR.

Government of Kerala
1977

Reg. No. KL/TV/[illegible]

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GOVERNMENT OF KERALA

Home (SS-B) Department

NOTIFICATION

No. 19711/SSB4/77/Home. *Dated, Trivandrum, 13th June 1977.*

S. R. O. No. 491/77.—Whereas the Government of Kerala are of opinion that the continued existence of the Commission of Inquiry appointed by notification No. 19711/SSB4/77/Home dated the 22nd April, 1977 published in the Kerala Gazette Extraordinary No. 247 dated the 22nd April, 1977, is unnecessary;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 7 of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), the Government of Kerala hereby declare that the said Commission of Inquiry shall cease to exist with effect from the Ninth day of June, 1977.

By order of the Governor.

S. NARAYANASWAMY,
Special Secretary to Government.

Explanatory Note

Government have instituted a separate Judicial probe into the cases of some persons including Shri Kakkuzhiyil Kannan, who are said to be missing after they were taken into police custody. As such the enquiry ordered in the Notification dated 22nd, April, 1977 has become unnecessary. Hence the notification.

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GOVERNMENT OF KERALA

Home (SS-B) Department

NOTIFICATION

No. 17740/SSB4/77/Home. *Dated, Trivandrum, 13th June 1977.*

S. R. O. No. 492/77.—Whereas the Government of Kerala are of opinion that the continued existence of the Commission of Inquiry appointed by notification No. 17740/SSB4/77/Home dated the 19th April, 1977, published in the Kerala Gazette Extraordinary No. 235 dated the 19th April, 1977, is unnecessary;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 7 of the Commission of Inquiry Act. 1952 (Central Act 60 of 1952) the Government of Kerala hereby declare that the said Commission of Inquiry shall cease to exist with effect from the Ninth day of June, 1977.

By order of the Governor.

S. NARAYANASWAMY,
Special Secretary to Government.

Explanatory Note

Government have instituted a separate Judicial probe into the cases of some persons including Shri Vijayan Nair, who are said to be missing after they were taken into police custody. As such the enquiry ordered in the Notification dated 19th April 1977 has become unnecessary. Hence the notification.

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